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IN THE
Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1710

RANKIN COUNTY BOARD OF EDUCATION, ET AL.,
Petitioners,
vs.

KENNETH W. ADAMS, UNITED STATES, ET AL.

**BRIEF FOR RESPONDENTS-PRIVATE-PLAINTIFFS
IN OPPOSITION TO CERTIORARI**

JACK GREENBERG
ERIC SCHNAPPER
MELVYN R. LEVENTHAL
10 Columbus Circle
New York, New York 10019
(212) 586-8397

FRED L. BANKS, JR.
538½ North Farish Street
Jackson, Mississippi 39202

*Attorneys for
Respondents-Private-Plaintiffs*

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Opinions Below

The opinion of the Court of Appeals upon which the petition is based is reported at 524 F.2d 928. An earlier opinion of the Court of Appeals, not cited by petitioners, is reported at 485 F.2d 324.

Statement of the Case

Petitioners' Statement of the Case omits these critical facts:

1. This action began as a typical comprehensive school desegregation suit initiated by black school age children against officials of the Rankin County School District. In April, 1970, the district court ordered defendants to merge

black and white faculties and implement a geographic zoning and pairing plan of pupil assignment by September, 1970.¹

The merger of faculties resulted in the wholesale dismissal and demotion of black professionals and other personnel to an extent without parallel in Mississippi. All of the district's black principals were demoted to assistant principal and 28 black teachers were discharged; several black teacher aides and other non-professional staff were also discharged. As the Court of Appeals observed, black faculty was reduced by 26% at the moment of desegregation. Defendants' explanation for the decimation of black faculty was that black schools were "absorbed" into white schools under the desegregation plan and hence black faculty positions evaporated in the merger. 485 F.2d at 326.² The first opinion of the Court of Appeals, held unlawful, *inter alia*, defendants' basis for discharging black faculty members. 485 F.2d 324.

2. April 12, 1974, on remand from the Fifth Circuit's first decision, the parties entered into a "Stipulation" resolving the claims of 20 of the discharged or demoted black professionals. (Reproduced herein at 1a-17a) Included therein was an agreement that 15 of the 20 "are entitled to an award of back pay," (16a) in the total amount of \$28,482. and that the "Rankin County School District shall issue checks payable to the order of each [such discriminatee in] the amount indicated." (17a)

¹ *Alexander v. Holmes County Board of Education*, 396 U.S. 19 (1969); *Singleton v. Jackson M.S.S.D.*, 419 F.2d 1211, 1217 (5th Cir. 1969).

² Defendants also argued that since white schools continued to exist under the desegregation plan white teachers and principals were secure; none was dismissed as a result of desegregation.

This settlement agreement was stifled by the district court which determined to prohibit implementation until it could resolve whether the Eleventh Amendment precluded awards of back pay against local school district officials.³

3. As the Court of Appeals observed in its first opinion, the proceedings relating to the discharge and demotion of black personnel began with a "motion and order of the [District] Court allowing the United States to intervene on behalf of black teachers and principals who were allegedly discriminated against either in not being rehired or from demotions by the conversion from a dual system to a unitary one." 485 F.2d at 326. The government's motion of February, 1971, invoked the court's jurisdiction under 42 U.S.C. 2000e-6 and 2000h-2.

In summary, what began as a school desegregation suit advanced by black school age children evolved into a suit advanced by the United States and the original plaintiffs to remedy Rankin County's racially discriminatory personnel actions which attended the conversion of the system to unitary operation. The later proceedings are the subject of the defendants' petition for certiorari.

Reasons for Denying the Writ

1. Petitioners argue, as their first reason for granting the writ, that the Court of Appeals decided an issue not first decided by the district court, i.e., whether the Eleventh

³ The district court was to later find that in addition to the 20 professionals covered by the stipulation, six other black teachers had been unlawfully discharged. It ordered them reinstated but again felt impelled to withhold back pay in light of Eleventh Amendment issues.

Amendment precludes an award of back pay against local school officials of Mississippi.

Petitioners fully briefed and presented the substantive issue in their petition for rehearing in the Court of Appeals. Moreover, by the time the case was decided by the Court of Appeals, the unlawfully discharged black professionals had waited more than five years—from September, 1970 through December, 1975—for a judgment clearly due them. The Court of Appeals, considering the issue closed (see *infra*, p. 5, and Appendices “B” and “C” hereto), and mindful of the stringent time requirements for conversion of school systems from dual to unitary operation, (*Alexander, supra*) properly determined that further delays in bringing the matter to judgment would be unconscionable.

2. Petitioners also assert that §1983 “was the sole authority” for this action and that Rankin County School officials, individually named in the Complaint, are not “persons” within the meaning of that statute. The jurisdictional basis for the suit, however, is not §1983 but primarily 42 U.S.C. §2000h-2 and §2000e-6. The government’s right to obtain back pay against school officials under these statutes is quite properly not challenged in the petition. *United States v. Georgia Power Co.*, 474 F.2d 906 (5th Cir. 1973). Accordingly, even if the Court were to decide against §1983 jurisdiction, the judgment to be entered against defendants would be upheld under the alternative jurisdictional statutes. Moreover, defendants agreed to the back pay awards through a Stipulation (Appendix “A” hereto) thereby waiving any immunity defense. *Edelman v. Jordan*, 415 U.S. 651, 673-74 (1974). For these reasons *Mt. Healthy City School Dist. v. Doyle*, No. 75-1278,

cert. granted April 16, 1976, can have no impact on this case.

Finally, the issue is not worthy of review because it will not likely arise in future cases: Title VII of the Civil Rights Act of 1964 extends to local school districts effective 1972, and §1983 is no longer a necessary jurisdictional basis for suits of this kind. *Fitzpatrick v. Bitzer*, No. 75-251, June 28, 1976, 44 LW 5120.

3. Petitioners final basis for certiorari, that a local school district in Mississippi is a state agency for Eleventh Amendment purposes, is also not a proper subject for review in this Court. First, this issue of local law is not of sufficient importance to warrant review by this Court. Secondly, the petition does not dispute that the Eleventh Amendment does not bar an award in suits brought by the United States against state agencies. Thirdly, this issue of local law (whether under Mississippi law school districts are state agencies) has been resolved against petitioners by two local United States District Judges well versed in Mississippi law. See Appendices “B” and “C” hereto. Such decisions are not reviewable in this Court. *Bishop v. Wood*, No. 74-1303, June 10, 1976, 44 LW 4820, 4121-22, n.10 (Determination of lower federal courts on issue of state law is controlling).

CONCLUSION

The decisions of the Court of Appeals are correct and consistent with the decisions of this Court and other courts of appeals. The petition presents no important question of law which this Court has not already settled. And for

the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

JACK GREENBERG
ERIC SCHNAPPER
MELVYN R. LEVENTHAL
10 Columbus Circle
New York, New York 10019
(212) 586-8397

FRED L. BANKS, JR.
538½ North Farish Street
Jackson, Mississippi 39202

*Attorneys for
Respondents-Private-Plaintiffs*

APPENDICES

Appendix A

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

CIVIL ACTION No. 4156(R)

KENNETH W. ADAMS, et al.,

Plaintiffs,

v.

RANKIN COUNTY BOARD OF EDUCATION,

Defendants.

STIPULATION

Filed:

Apr 12, 1974

It is hereby stipulated, by and between counsel for the respective parties, that the facts contained in this stipulation are true and accurate and that the remedies agreed upon at a settlement conference on January 7, 1974, as are set out in this Stipulation will, when implemented, resolve the issues concerning the extent of relief to be afforded to 20 of the 42 faculty and other staff members involved in the orders entered by this Court on June 14, 1971 and November 1, 1973.

The parties through counsel agree that:

(1) Mary C. B. Adams was employed by the Rankin County School System as a teacher at the McLaurin High School during the 1969-70 school year. She was not re-employed by the Rankin County School System for the 1970-71 school year but she was employed for the 1970-71 school year at Alcorn College at an annual salary of \$7200.

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She was offered re-employment by the Rankin County School District for the 1971-72 school year in a teaching position equivalent in duties and salary to her previously held position in the Rankin County School System. She accepted the proffered position and at the conclusion of the 1971-72 school year, she resigned and has been employed in the Jackson Public School System since her resignation. Her annual earnings, the salary she would have made if employed in Rankin County, and the difference between those salaries is as follows:

	<i>Salary if Employed in Rankin County</i>	<i>Actual Salary</i>	<i>Difference¹</i>
1970-71	6500	7200	0
1971-72	7000	7000	0
1972-73	7400	8200	0
1973-74	7800	10,925	0
			—
		Total	0

Further, Ms. Adams does not seek an offer of reinstatement.

(2) Walter Lee Beard was employed by the Rankin County School System as a teacher at the Gosher-Fannin School during the 1969-70 school year. He was not re-employed by the Rankin County School System for the 1970-71 school year but he was employed during 1970-71 with the Catholic Diocese of Natchez-Jackson at an annual salary of \$7200. He was offered re-employment for the 1971-72 school year by the Rankin County School District and the teaching position offered was equivalent in duties

¹ Differences between the actual salary and salary if employed in Rankin County which are less than zero are indicated as zero.

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and salary to his previously held position in the Rankin County School System.

He rejected the proffered position in 1971-72, and his annual earnings at the Catholic Diocese of Natchez-Jackson, and his earnings at Mississippi Industrial and Special Service, Inc. since his dismissal in 1969-70, the salary he would have received if employed in Rankin County, and the difference between those salaries is as follows:

	<i>Salary if Employed in Rankin County</i>	<i>Actual Salary</i>	<i>Difference</i>
1970-71	6000	7200	0
1971-72	6512	7200	0
1972-73	6842	7200	0
1973-74	7000	7200	0
			—
		Total	0

Further, he does not seek an offer of reinstatement.

(3) Everett Brown was employed during the 1969-70 school year in the Rankin County School System as a teacher, head baseball coach, and assistant football coach at Carter High School. He was offered re-employment by the Rankin County School District for the 1970-71 school year. The proffered position was not equivalent in duties and salary to his previously held position, but Mr. Brown does not seek an offer of reinstatement. He has been continually employed at Tougaloo College since the 1969-70 school year as a student union director. His annual earnings, the salary he would have made if employed in Rankin County, and the difference between those salaries is as follows:

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	<i>Salary if Employed in Rankin County</i>	<i>Actual Salary</i>	<i>Difference</i>
1970-71	6500	7100	0
1971-72	6812	7400	0
1972-73	7142	8000	0
1973-74	7442	8900	0
		<hr/>	
		Total	0

(4) Mildred Bryant was employed during the 1969-70 school year in the Rankin County School System as a teacher at McCall School. She was not offered re-employment for the 1970-71 school year but she was employed in Jefferson Davis County at an annual salary of \$3000. She was offered re-employment in the Rankin County School System for the 1971-72 school year and she accepted the proffered position which was equivalent in salary and duties to her previously held position during the 1969-70 school year. She continued to be employed in that position, and her annual earnings, the salary she would have made if employed in Rankin County, and the difference between those salaries is as follows:

	<i>Salary if Employed in Rankin County</i>	<i>Actual Salary</i>	<i>Difference</i>
1970-71	5500	3000	\$2,500 plus annual teacher salary incre- ment for 1971- 72, 1972-73, 1973-74. ²

² The annual teacher salary increment represents the amount of additional salary due a teacher who, as a result of his or her dis-

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(5) Vera Mae Gilmore was employed during the 1969-70 school year in the Rankin County School System as a teacher at the McCall School. She was not re-employed in Rankin County for the 1970-71 school year, but she was employed during that year at Leake County Schools at an annual salary of \$5188. She was offered a position equivalent in salary and duties to her previously held position in 1969-70 by the Rankin County School District for the 1971-72 school year, and she accepted the proffered position in which she continues to be presently employed. She continued to be employed in that position, and her annual earnings, the salary she would have made if employed in Rankin County, and the difference between those salaries is as follows:

	<i>Salary if Employed in Rankin County</i>	<i>Actual Income</i>	<i>Difference</i>
1970-71	5500	5188	312

(6) Harrison Hal was employed for the 1969-70 school year by the Rankin County School System as a teacher and head basketball coach at Carter School. He was offered a teaching position for the 1970-71 school year and though the proffered position was not equivalent in duties and salary to his previously held position in Rankin County, he does not seek an offer of reinstatement. He has been continually employed in the Jackson Public School System since 1969-70. His annual earnings, the salary he would have made if employed in Rankin County, and the difference between those salaries is as follows:

missal from the Rankin County School System, has lost one year of full-time teaching experience. The procedure to be followed in computing this increment is set out at the conclusion of this Stipulation.

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	<i>Salary if Employed in Rankin County</i>	<i>Actual Income</i>	<i>Difference</i>
1970-71	6500	6800	0

(7) Ira Jones was employed during the 1969-70 school year by the Rankin County School District as a teacher at the McCall School. She was not re-employed for the 1970-71 school year but she was employed for that school year in the Prentiss School District at an annual salary of \$5400. She was offered re-employment by the Rankin County School District for the 1971-72 school year in a teaching position that was equivalent in duties and salary to her previously held position in the Rankin County School System and she has been continually employed in the Rankin County School System since that time. Her annual earnings, her salary if employed in the Rankin County School System, and the difference between those salaries is as follows:

	<i>Salary if Employed in Rankin County</i>	<i>Actual Income</i>	<i>Difference</i>
1970-71	6000	5400	600
Total			600

(8) Estus Hood was employed by the Rankin County School System during the 1969-70 school year as a teacher and head football coach at McLaurin High School. He was not offered re-employment by Rankin County for the 1970-71 school year but he was employed during 1970-71 at Saint Anne's School in Kankakee, Illinois at an annual salary of \$10,744. He has been employed at Saint Anne's since 1970-71 and he does not seek an offer of reinstatement. His

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annual salary, the salary he would have made if employed in Rankin County, and the difference between those salaries is as follows:

	<i>Salary if Employed in Rankin County</i>	<i>Actual Income</i>	<i>Difference</i>
1970-71	6500	10,744	0
1971-72	6700	11,088	0
1972-73	6900	11,507	0
1973-74	7100	11,846	0
Total			0

Mr. Hood's claim for moving expenses incurred following his dismissal by the Rankin County School District during the 1969-70 school is no way affected by this stipulation and remains as an unresolved issue.

(9) Vernell Lewis was employed by the Rankin County School District during the 1969-70 school year as a teacher at the Carter and Brandon Schools. She was not re-employed by the Rankin County School District for the 1970-71 school year but she was employed for that school year as a substitute teacher in the Jackson Public School System with annual salary earnings of \$1,869. She was offered re-employment by the Rankin County School District for the 1971-72 school year and the position offered was equivalent in teaching duties and salary to her previously held position in the Rankin County School System. She accepted the proffered position and she continues to be employed in that position. Her annual salary, the salary she would have made if employed in Rankin County, and the difference between those salaries is as follows:

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	<i>Salary if Employed in Rankin County</i>	<i>Actual Income</i>	<i>Difference</i>
1970-71	6000	1869	4131
		Total	4131

(10) Adell Odom was employed by the Rankin County School District during the 1969-70 school year as a teacher at Carter and Pearl Schools. She was not re-employed by the Rankin County School District for the 1970-71 school year but she did receive retirement pay and social security during that year totaling \$2,361. She was offered re-employment for the 1971-72 school year by the Rankin County School District equivalent in duties and salary to her previously held position in Rankin County. She accepted the proffered position and retired at the conclusion of the 1971-72 school year. Her annual salary, the salary she would have made if employed in Rankin County, and the difference between those salaries is as follows:

	<i>Salary if Employed in Rankin County</i>	<i>Actual Income</i>	<i>Difference</i>
1970-71	6000	2361	3639
		Total	3639

(11) Elsie Parrett was employed by the Rankin County School District for the 1969-70 school year as a teacher at the McCall School. She was not re-employed by the Rankin County School District for the 1970-71 school year and her only employment during 1970-71 amounted to earnings of \$28.00. She was offered re-employment for the 1971-72 school year in a position equivalent in duties and salary to

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her previously held position in the Rankin County School System. She accepted the proffered position and has been continually employed in the Rankin County School System since that time. Her annual salary, the salary she would have made if employed in Rankin County, and the difference between those salaries for the 1970-71 school year is as follows:

	<i>Salary if Employed in Rankin County</i>	<i>Actual Income</i>	<i>Difference</i>
1970-71	6000	\$28	5972—plus annual teacher salary incre- for 1971-72, 1972-73 and 1973-74

(12) Israel Robinson was employed by the Rankin County School System during the 1969-70 school year as a teacher at the Carter School. He was not re-employed for the 1970-71 school year but he received \$600 during that year as a church minister. He was offered re-employment for the 1971-72 school year by the Rankin County School District in a position equivalent in salary and duties to his previously held position in the Rankin County School System. He accepted the proffered position and has been continually employed in the Rankin County School System since his 1971-72 re-employment. His annual earnings, the salary he would have made if employed in the Rankin County School System, and the difference between those salaries is as follows:

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	<i>Salary if Employed in Rankin County</i>	<i>Actual Income</i>	<i>Difference</i>
1970-71	6000	600	5400
			<hr/>
		Total	5400

(13) Lottie D. Smith was employed by the Rankin County School System during the 1969-70 school year as a teacher at the Carter and Brandon Schools. She was not offered re-employment by the Rankin County School District for the 1970-71 school year but she was employed by Community Education Extension Program and Neighborhood Youth Corps at \$4824 annually during that year. She was offered re-employment for the 1971-72 school year by the Rankin County School District in a teaching position equivalent in duties and salary to her previously held position in the Rankin County School System. She rejected the offer and has been continually employed since the 1971-72 school year at Neighborhood Youth Corps. Her annual earnings, the salary she would have made if employed in Rankin County, and the difference between those salaries is as follows:

	<i>Salary if Employed in Rankin County</i>	<i>Actual Income</i>	<i>Difference</i>
1970-71	5800	4824	976
1971-72	6000	6123.35	0
1972-73	6330	8143.35	0
1973-74	7030	7660	0
			<hr/>
		Total	976

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(14) Clinton White was employed by the Rankin County School System as a trade and industrial education teacher at McCall School during the 1969-70 school year. He was offered re-employment by the Rankin County School System for the 1970-71 school year and he rejected the offer. He was employed for the 1970-71 school year in the Jackson Public School System and he has been employed in the Madison County School System for the 1971-72, 1972-73, 1973-74 school years. Though the position offered by the Rankin County School System for the 1970-71 was not equivalent in duties and salary, Mr. White does not seek an offer of reinstatement. His annual earnings, the salary he would have made, if employed in Rankin County, and the difference between those salaries is as follows:

	<i>Salary if Employed in Rankin County</i>	<i>Actual Income</i>	<i>Difference</i>
1970-71	7100	6200	900
1971-72	7600	8200	0
1972-73	7990	8500	0
1973-74	8700	9000	0
			<hr/>
		Total	900

(15) Delores White was employed by the Rankin County School System during the 1969-70 school year as a home economics teacher at the McCall School. She was not offered re-employment by the Rankin County School System for the 1970-71 school year, but she was employed in the Jackson Public School System during the 1970-71 school year with an annual salary of \$3100. She was offered re-employment by the Rankin County School District for the 1971-72 school year in a teaching position equivalent in

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duties and salary to her previously held position in the Rankin County School System. She accepted the proffered position and has been continually employed in the Rankin County School System since that time. Her annual salary, the salary she would have made if employed in Rankin County, and the difference between those salaries is as follows:

	<i>Salary if Employed in Rankin County</i>	<i>Actual Income</i>	<i>Difference</i>
1970-71	5600	3,360	2,240
			—
Total			2,240
plus the annual teacher salary increment for 1971-72, 1972-73, and 1973-74			

(16) Marie White was employed by the Rankin County School System during the 1969-70 school year as a teacher at the McCall and Pelahotchie Schools. She was not offered re-employment in Rankin County for the 1970-71 school year but she was employed in the Carthage School System during that year at an annual salary of \$5288. She was offered re-employment by Rankin County for the 1971-72 school year in a teaching position equivalent in duties and salary to her previously held position in the Rankin County School System. She accepted the proffered position and has been continually employed in the Rankin County School System. Her annual earnings, the salary she would have

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made, if employed in Rankin County, and the difference between those salaries is as follows:

	<i>Salary if Employed in Rankin County</i>	<i>Actual Income</i>	<i>Difference</i>
1970-71	5700	5288	412
			—
Total			412

(17) Wylma King was an elementary principal at McLaurin School during the 1969-70 school year in the Rankin County School System. She was a teacher at the Florence School for the 1970-71 school year and her annual salary during that year was \$6500. She has been continually employed in the Rankin County School System and is now an elementary school principal. Her annual earnings, her salary if she had continued as a principal in the Rankin County School System, and the difference between those salaries is as follows:

	<i>Salary if continually employed in 1969-70 position</i>	<i>Actual Salary</i>	<i>Difference</i>
1970-71	7000	6500	500
1971-72	7500	7500	0
1972-73	8270	8270	0
1973-74	9360	9360	0
			—
Total			500

(18) Irvin Breland was employed during the 1969-70 school year by the Rankin County School System as an Assistant Principal at Carter High School. During the 1970-71 school year he was employed in Rankin County as

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a teacher at the Pearl-McLaurin School at an annual salary of \$6500. He has been continually employed in the Rankin County School System and is presently employed as Assistant Principal at Pearl Junior High. His annual earnings, his salary if he had continued as an assistant principal in the Rankin County School System, and the difference between those salaries is as follows:

	<i>Salary if continually employed in 1969-70 position</i>	<i>Actual Salary</i>	<i>Difference</i>
1970-71	6900	6500	400
1971-72	7400	7400	0
1972-73	8316	8316	0
1973-74	9322	9322	0
			<hr/>
		Total	400

(19) Nathaniel Davis was employed during the 1969-70 school year as a high school coach and teacher at the McLaurin School. During the 1970-71 school year he was employed in Rankin County as a junior high coach and teacher at the McLaurin School at an annual salary of \$6000. He has been continually employed in the Rankin County School System and is presently employed as math teacher and head football coach at McLaurin Jr. He is entitled to a high school coaching and teaching position and such a position will be made available to him by the Rankin County School System for the 1974-75 school year and thereafter as long as he is employed in the Rankin County School System. His annual earnings, his salary if he had continued to be employed as a high school coach and teacher in Rankin County, and the difference between those salaries is as follows:

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	<i>Salary if continually employed in 1969-70 position</i>	<i>Actual Income</i>	<i>Difference</i>
1970-71	6500	6000	500
1971-72	7000	7000	0
1972-73	7330	7330	0
1973-74	8040	8040	0
			<hr/>
		Total	500

(20) Bertha Carter was employed as a business education teacher by the Rankin County School System during the 1969-70 school year at the McLaurin School. She was employed in Rankin County during the 1970-71 school year as an elementary school teacher at the Florence School at an annual salary of \$5600.00. She is entitled to a position in the Rankin County School System as a business education teacher and such a position shall be offered to her by the defendants for the 1974-75 school year. Her annual earnings, the salary she would have made if continually employed as a business education teacher, and the difference between those salaries, is as follows:

	<i>Salary if continually employed in her 1969-70 position</i>	<i>Actual Income</i>	<i>Difference</i>
1970-71	5600	5600	0
1971-72	6212	6212	0
1972-73	6622	6622	0
1973-74	7312	7312	0
			<hr/>
		Total	0

On the basis of above, the following persons are not entitled to an award of back pay:

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1. Mary C. B. Adams
2. Walter Beard
3. Everett Brown
4. Harrison Hal
5. Estus Hood

—however his claim for
moving expenses remains
an unresolved issue as
previously noted.

The following persons are entitled to an award of back pay as indicated:

<i>Name</i>	<i>Amount</i>
1. Mildred Bryant	\$2500*
2. Vera Mae Gilmore	312*
3. Ira Jones	600*
4. Vernell Lewis	4131*
5. Adell Odom	3639
6. Elsie Parrett	5972*
7. Lottie D. Smith	976
8. Israel Robinson	5400
9. Clinton White	900
10. Deloris White	2240*
11. Marie White	412
12. Wylma King	500
13. Irvin Breland	400
14. Nathaniel Davis	500
15. Bertha Carter	0

Total 28,482.

All of the persons listed above have been informed of the relief agreed upon and agree that such relief would satisfy

* Indicates that annual teacher salary increment is due in addition to the amount indicated.

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all claims (except for attorneys' fees) they might have with respect to the issues in this case.

The parties, through their respective counsels, also agree that the following procedure will be implemented to carry out this stipulation:

For each person listed above as being due an award of back pay, the Rankin County School District shall issue checks payable to the order of each person as to the amount indicated. Where a person is due annual teacher salary increments, the Superintendent of Schools for the Rankin County School District shall calculate the amount of the increment due each person, and shall submit, through counsel, these computations to counsel for the plaintiffs and counsel for the United States, and following their approval, checks shall be issued for each person in the amount as approved.

The parties further agree that the above facts may be admitted into evidence in lieu of other proof or testimony and that the awards or other relief due and the procedures for implementation, set out above, may be incorporated in an appropriate order of this Court.

This agreement shall in no way affect the rights of any other personnel involved in this case, whose claims for reinstatement, back pay, and other appropriate equitable relief shall be determined at subsequent hearing.

Respectfully submitted,

/s/ MELVIN R. LEVENTHAL
Counsel for the [private] Plaintiffs

/s/ BILLY G. BRIDGES
Counsel for the Defendants

/s/ J. GERALD HEBERT
Counsel for the United States

Appendix B

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF MISSISSIPPI

JACKSON DIVISION

CIVIL ACTION No. 4692

BENNIE G. THOMPSON, ET AL.,

Plaintiffs,

v.

MADISON COUNTY BOARD OF EDUCATION, AND ROBERT E. COX,
SUPERINTENDENT OF THE MADISON COUNTY SCHOOL DISTRICT,

Defendants.

This case is before the Court on remand by the Fifth Circuit Court of Appeals with directions to decide the applicability of the United States Supreme Court's decision in *Edelman v. Jordan*,¹ to the plaintiff's claim for back pay.

In footnote twelve of *Edelman*, supra, the Court stated that the actions of a county or county officials may be considered state actions for purposes of the Fourteenth Amendment, but they are not necessarily state actions for purposes of the immunity protections of the Eleventh Amendment.²

¹ 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662.

² 12. "The Court of Appeals considered the Court's decision in *Griffin v. School Board*, 377 U.S. 218, 84 S.Ct. 1226, 12 L.Ed.2d 256 (1964), to be of like import. But as may be seen from *Griffin's* citation of *Lincoln County v. Luning*, 133 U.S. 529, 10

Appendix A

Under Mississippi law counties are separate legal entities from the state and have the right to sue and be sued in their own name.³

The County Board of Education has control of all funds provided for the support of the county schools.⁴ They also have the power to hire principals and teachers and other non-instructional personnel.⁵ They can enter into contracts for transportation and to make capital improvements.⁶

In addition to the required local ad valorem tax effort of each county for support of its schools, the county board of education has the power to request an additional tax levy "for all other lawful operating and incidental expenses of such school district."⁷

S.Ct. 363, 33 L.Ed. 766 (1890), a county does not occupy the same position as a State for purposes of the Eleventh Amendment. See also *Moor v. County of Alameda*, 411 U.S. 633, 93 S.Ct. 1785, 36 L.Ed.2d 596 (1973). The fact that county policies executed by the county officials in *Griffin* were subject to the commands of the Fourteenth Amendment, but the county was not able to invoke the protection of the Eleventh Amendment, is no more than a recognition of the long established rule that while county action is generally state action for purposes of the Fourteenth Amendment, a county defendant is not necessarily a state defendant for purposes of the Eleventh Amendment."

³ Miss. Code Annotated 1972, § 11-45-17; See also *Madison County Board of Education v. Miles*, 252 Miss. 711, 173 So.2d 425 (1965).

⁴ Miss. Code Annotated 1972, § 37-5-31 provides: "The county boards of education shall have full control of the distribution, allotment and disbursement of all minimum education program funds provided for the support and operation of the county school system whether such funds be derived from state appropriations, local ad valorem tax collections, or otherwise, etc."

⁵ Miss. Code Annotated 1972, §§ 37-9-15, 37-9-17, 37-9-3.

⁶ Miss. Code Annotated 1972, §§ 37-7-313, 37-47-27.

⁷ Miss. Code Annotated 1972, §§ 37-57-1, 37-57-21.

Appendix A

Therefore, since county boards of education are separate legal entities from the state, with separate funds and accounts and with tax-levying authority, they are not within the immunity of the Eleventh Amendment under principles expressed in *Edelman*, supra.

The parties stipulated in this action that the amount of earnings plaintiff Evelyn K. Thomas would have received had she continued to be employed with the Madison County schools, less her interim earnings, with the addition of 6% interest per annum to the present, is \$22,293.68. She is entitled to this amount because back pay has been held to be an integral part of the equitable relief of injunctive reinstatement.⁸

This Court, after considering the criteria set out in *Johnson v. Georgia Highway Express, Inc.*, (5 CA) 488 F.2d 714, awards counsel for the plaintiff a reasonable attorney's fee of \$3,900.00, based upon 195 hours of work at \$20.00 per hour.

It is the opinion of the Court that the Eleventh Amendment provides no immunity for defendants under application of the Supreme Court's holding in *Edelman*, supra, and, therefore, defendants are liable for back pay to plaintiff Evelyn Thomas for wrongfully discharging her. Defendants are also liable for reasonable attorney's fees as set out in the opinion.

An order accordingly may be presented for entry within five days under the rules of this Court.

/s/ HAROLD COX

UNITED STATES DISTRICT JUDGE

July 21, 1975

⁸ *Harkless v. Sweeny Independent School District*, (5CA) 427 F.2d 319, cert. denied, 400 U.S. 991.

Appendix C

"It is suggested by defense counsel that the Eleventh Amendment may bar an award of attorney fees against the Board of Trustees of the Clarksdale Municipal Separate School District since it is an arm of the State of Mississippi. We summarily reject the Eleventh Amendment argument as here-applicable. In our view, this municipal school district is not a part of the state for Eleventh Amendment purposes; it is no more than a local educational agency. The district's trustees are appointed by the governing authorities of the City of Clarksdale; the district has local taxing power, it may enter into contracts, sue and be sued, issue bonds and incur indebtedness to buy land, erect school buildings and make other capital improvements. True enough the board receives from the state a substantial portion of its operating expenses to pay teachers' salaries and administrative costs, but it has lawful power to, and very probably does, supplement state funds by local taxation levied upon property situated within the separate school district. Under Mississippi law, a municipal separate school district cannot claim Eleventh Amendment immunity, or assert that any money judgment rendered against it is, in effect, a charge upon the state's treasury. That preliminary argument is therefore rejected."

Ruling of the Court, *Henry v. Clarksdale M.S.S.D.*, D.C. 64-28-K, N.D. Miss., November 10, 1975. pp. 11-12 (Judge Keady).

[Significantly, counsel for defendants in *Henry v. Clarksdale M.S.S.D.*, Semmes Luckett, Esq., one of the State's leading school board lawyers, has not appealed Judge Keady's determination.]